

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition **45-003-13-1-5-00213-16**
Petitioner: **James Nowacki**
Respondent: **Lake County Assessor**
Parcel: **45-08-18-303-025.000-003**
Assessment Year: **2013**

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated this appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 19, 2015. On January 6, 2016, Petitioner filed the Form 131 petition with the Board.
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on January 29, 2018. Neither the ALJ nor the Board inspected the property.
4. Petitioner James Nowacki was sworn and testified. Robert W. Metz and Joseph E. James, Lake County Hearing Officers, were sworn as witnesses for Respondent.

Facts

5. The subject property is a vacant residential lot located at 2608 West 26th Place in Gary.
6. For 2013, the property was assessed at \$3,100.
7. Petitioner requested an assessed value of \$1,800.¹

¹ Petitioner requested an assessed value of \$2,000 on the Form 131, but requested a value of \$1,800 at the hearing.

Record

8. The official record contains the following:

a. A digital recording of the hearing

b. Exhibits:

Neither Petitioner nor Respondent presented any exhibits.

Board Exhibit A: Form 131 petition and exhibits,

Board Exhibit B: Notice of hearing,

Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.

10. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

11. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).

12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

13. The assessed value did not change from 2012 to 2013. Petitioner has the burden of proof.

Summary of Parties' Contentions

14. Petitioner's case:
- a. Petitioner acquired the property in 2009 for \$120 at auction. *Nowacki testimony.*
 - b. For 2017 Respondent valued the property at \$1,800. That value is a reduction of almost 50% from the 2013 assessment. Petitioner claims \$1,800 should have been the assessed value for 2013. According to him, the reduction was not because of any factors that influenced a decrease in the property's worth, but because the assessor looked more carefully at the property and because Petitioner persevered in the appeal process. *Nowacki testimony.*
 - c. Petitioner contends this property, like many others in Gary, is in a blighted area with a lack of services and a high tax rate. He contends that Respondent continues to overlook the blighted condition and continues to over-assess properties. According to Petitioner, high taxes and over-assessments cause owners in the area to abandon their properties. *Nowacki testimony.*
 - d. Petitioner contends there is no empirical market evidence that would indicate the subject property is worth \$3,100. Petitioner testified that these properties do not sell for any price other than what they sold for at the tax sale. *Nowacki testimony.*
 - e. Petitioner complains that this appeal is five years old and that the appeal process is complicated, difficult, and tedious. As a result, very few people actually get to this point in the process. *Nowacki testimony.*
15. Respondent's case:
- a) The subject property is adjacent to 4438 West 26th Place. Both properties are the same size and are assessed the same at \$3,100. *James testimony.*
 - b) Respondent claims Petitioner has not presented any empirical market data to support his position and, as a result, there should be no change for 2013. *James testimony.*

ANALYSIS

16. Petitioner failed to make a prima facie for a reduction in the assessed value. The Board reached this decision for the following reasons:
- a. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance ("DLGF") has defined as its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show market value-in-use, a party may offer evidence that is consistent with the definition of true tax value. A market value-in-

- use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) will often be probative. *Koostard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable assessments to determine an appealed property’s market value-in-use).
- b. Regardless of the method used to prove a true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the assessment at issue in this appeal was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. Petitioner purchased the property at auction for \$120, but did not say exactly when. Petitioner did not present any documentation to substantiate the purchase price. And Petitioner did not claim that the purchase price should be equal to the assessed value. Petitioner did not present any probative evidence to support his requested value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
 - d. Petitioner complains the appeal process is long, difficult and tedious; however these are not reasons to change the assessed value to \$1,800. And pursuant to Ind. Code § 6-1.1-15-1(o), Petitioner had the right to appeal directly to the Board if the petition was not heard by the PTABOA within 180 days as required by Ind. Code § 6-1.1-15-1(k). Therefore, the lengthy appeal process was due, in part, to Petitioner’s own inaction.
 - e. Petitioner failed to make a prima facie case for changing the assessment. Where a petitioner has not supported its claim with probative evidence, the respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

- 17. Petitioner failed to establish a prima facie case that the 2013 assessed value is incorrect. Consequently, the Board finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 assessed value should not be changed.

ISSUED: April 26, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.